

16 C.J.S. Constitutional Law I I A Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

A. Definitions

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West's A.L.R. Digest, [Constitutional Law](#) 🔑 [500](#), [505](#), [509](#), [535](#)

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16 C.J.S. Constitutional Law § 1

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

A. Definitions

§ 1. Definition of "constitution"

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 500

A constitution is the original law by which a system of government is created and set up and to which the branches of government must look for all their power and authority. The term "law" may or may not include the jurisdiction's constitution as well as its statutes, depending on context.

A constitution is a fundamental document, which, in recognizing citizens' rights and establishing government, provides essential checks and balances whose complexity is to be neither undervalued nor disregarded.¹ It may be defined as the original law by which a system of government is created and set up and to which the branches of government must look for all their power and authority.² It may also be defined as that fundamental and organic law of a state which contains the principles on which government is founded, regulates the division of sovereign powers, and directs to what persons each of these powers is to be entrusted and the manner of its exercise.³

The term "constitution" is ordinarily employed to designate the organic law in contradistinction to the term "laws," which is generally used to designate statutes or legislative enactments,⁴ though "law" may, in accordance with the context in which it is used, comprehend or include the constitution or a constitutional provision⁵ or amendment.⁶

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Footnotes

- 1 Pa.—*In re Bruno*, 101 A.3d 635 (Pa. 2014).
- 2 Ga.—*Wheeler v. Board of Trustees of Fargo Consol. School Dist.*, 200 Ga. 323, 37 S.E.2d 322 (1946).
- 3 Md.—*Board of Sup'rs of Elections for Anne Arundel County v. Attorney General*, 246 Md. 417, 229 A.2d 388 (1967).
Organic law
A state's organic law may include its constitution and its declaration of rights.
Md.—*Schisler v. State*, 394 Md. 519, 907 A.2d 175 (2006).
- 4 Cal.—*Los Angeles Gas & Elec. Co. v. Los Angeles County*, 21 Cal. App. 517, 132 P. 282 (2d Dist. 1913).
"Law" distinguished
Md.—*Board of Sup'rs of Elections for Anne Arundel County v. Attorney General*, 246 Md. 417, 229 A.2d 388 (1967).
- 5 Tex.—*In re Dendy*, 175 S.W.2d 297 (Tex. Civ. App. Amarillo 1943), judgment aff'd, 142 Tex. 460, 179 S.W.2d 269, 151 A.L.R. 1217 (1944).
- 6 Wash.—*State v. Howell*, 107 Wash. 167, 181 P. 920 (1919).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

A. Definitions

§ 2. Definition of "constitution"—Statutes distinguished

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑500

Statutes are distinguishable from constitutions in that they provide the details of the subject matter addressed in accordance with constitutional dictates.

A statute and a constitution, although of unequal dignity, are both laws and rest on the will of the people.¹

The essential difference between a constitution and a statute, though, is that a constitution usually states general principles or policies and establishes a foundation of law and government whereas a statute provides the details of the subject matter addressed.²

A constitutional provision is a more basic, fundamental provision than a statutory enactment.³ It is a grant of power and must not be considered as a detailed statute but rather as a working set of practical principles.⁴ A constitution, unlike a statute, is intended not merely to meet existing conditions but also to govern future contingencies.⁵

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Footnotes

- 1 Miss.—[State v. Brantley](#), 112 Miss. 812, 113 Miss. 786, 74 So. 662 (1917) (overruled in part on other grounds by, [Power v. Robertson](#), 130 Miss. 188, 93 So. 769 (1922)).
That the term "law" may, depending on the context, refer to legislative statutes and enactments only, generally, see [§ 1](#).
Constitution as higher form of statutory law
Wyo.—[Bower v. Big Horn Canal Ass'n](#), 77 Wyo. 80, 307 P.2d 593 (1957).
2 Kan.—[In re Lietz Const. Co.](#), 273 Kan. 890, 47 P.3d 1275 (2002).
3 La.—[State v. Bazile](#), 85 So. 3d 1 (La. 2012).
4 N.J.—[State v. De Stasio](#), 49 N.J. 247, 229 A.2d 636 (1967).
As to the Federal Constitution as a grant of power, generally, see [§ 142](#).
5 Kan.—[State ex rel. Stephan v. Finney](#), 254 Kan. 632, 867 P.2d 1034 (1994).
The enduring nature of a constitution is discussed, generally, in [§ 5](#).

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16 C.J.S. Constitutional Law § 3

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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A. Definitions

§ 3. Constitutional convention

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  505, 509, 535

A constitutional convention is an assembly of delegates or representatives selected by the people for the purpose of forming or revising a constitution.

A constitutional convention is an assembly of delegates or representatives selected by the people for the purpose of forming or revising a constitution.¹ A revision to a state constitution cannot be accomplished by an amendment but requires a constitutional convention.² Indeed, the purpose of a constitutional convention is that of general revision of a state constitution only while an initiative procedure may be applicable only to amendment of the constitution.³

Constitution's prescribed method.

A state constitution can be neither revised nor amended except in the manner prescribed by itself, and the power which it has conferred upon the legislature in reference to proposed amendments, as well as to calling a convention, must be strictly pursued.⁴

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Footnotes

- 1 R.I.—[In re Opinion to the Governor](#), 55 R.I. 56, 178 A. 433 (1935).
As to state constitutional conventions, generally, see §§ [43](#) to [47](#).
- 2 Cal.—[Professional Engineers in California Government v. Kempton](#), 40 Cal. 4th 1016, 56 Cal. Rptr. 3d 814, 155 P.3d 226 (2007).
- 3 Cal.—[Rippon v. Bowen](#), 160 Cal. App. 4th 1308, 73 Cal. Rptr. 3d 421 (2d Dist. 2008), as modified, (Mar. 19, 2008).
Mich.—[Citizens Protecting Michigan's Constitution v. Secretary of State](#), 280 Mich. App. 273, 280 Mich. App. 801, 761 N.W.2d 210 (2008), aff'd in part, appeal denied in part, 482 Mich. 960, 755 N.W.2d 157 (2008).
As to citizen initiatives, generally, see §§ [34](#) to [42](#).
- 4 Alaska—[Bess v. Ulmer](#), 985 P.2d 979 (Alaska 1999).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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§ 4. Constitutional law

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑500

Constitutional law is that department of the law which treats constitutions and the validity of enactments as tested by the criterion of conformity to fundamental law.

Constitutional law is that department of the law which treats constitutions and the validity of enactments as tested by the criterion of conformity to fundamental law.¹ It is the field of law dealing with aspects of constitutional provisions, such as restrictions on government powers and guarantees of rights.² It is also the body of law deriving from the U.S. Constitution and dealing primarily with governmental powers, civil rights, and civil liberties.³

In constitutional law, the word "constitution" implies the written instrument agreed upon by the people as the absolute rule of action and decision for all departments and officers of government, in respect to all points covered by it, which must control until it is changed by the authority which established it.⁴

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Footnotes

- 1 S.C.—[Duncan v. Record Pub. Co.](#), 145 S.C. 196, 143 S.E. 31 (1927).
- 2 Black's Law Dictionary (10th ed.).
- 3 Black's Law Dictionary (10th ed.).
- 4 Wyo.—[Rasmussen v. Baker](#), 7 Wyo. 117, 50 P. 819 (1897).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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B. Nature and Authority of Constitutions

1. In General

§ 5. Constitution as fundamental law

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500 to 502

A constitution is the fundamental or basic law to which all others must conform, and the function of a constitution is to establish the framework and general principles of government.

The scope of constitutions generally includes not only the frame of government and a bill of rights but also numerous administrative provisions.¹ Viewed from the standpoint of legal character, a constitution is the fundamental or basic law to which all other laws must conform.²

Accordingly, the function of a constitution is to establish the framework and general principles of government.³ It is the supreme written will of the people regarding the framework for their government.⁴ The federal and state constitutions also establish and guarantee rights which they place beyond the power of the temporary majority, parliamentary or otherwise, to abridge.⁵

They establish an objective standard of conduct by which all departments of the government are bound⁶ so that the constitution may endure and meet unanticipated, changed conditions without alteration.⁷ Indeed, a constitution is intended to endure for ages to come, and must adapt itself to a future that can only be seen dimly, if at all.⁸

The purpose of a constitution, then, is not to legislate in detail but to set limits on the otherwise plenary power of the legislature.⁹

Alteration of governmental rights.

Inherent rights appertaining to any branch of government may be altered by the constitution.¹⁰

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Footnotes

- 1 Okla.—*Frantz v. Autry*, 1907 OK 65, 18 Okla. 561, 91 P. 193 (1907).
- 2 Del.—*State ex rel. Morford v. Emerson*, 40 Del. 233, 8 A.2d 154 (Super. Ct. 1939).
- 3 Ala.—*Hornsby v. Sessions*, 703 So. 2d 932 (Ala. 1997).
- 4 Neb.—*Home Builders Ass'n of Lincoln v. City of Lincoln*, 271 Neb. 353, 711 N.W.2d 871 (2006).
- 5 Or.—*In re Public Utilities Com'r of Or.*, 201 Or. 1, 268 P.2d 605 (1954).
- 6 Mass.—*In re Opinion of the Justices*, 324 Mass. 746, 85 N.E.2d 761 (1949).
- 7 Iowa—*In Interest of Johnson*, 257 N.W.2d 47 (Iowa 1977).
Constitution intended to govern future contingencies
Kan.—*In re Lietz Const. Co.*, 273 Kan. 890, 47 P.3d 1275 (2002).
- 8 U.S.—*N.L.R.B. v. Noel Canning*, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014).
- 9 Utah—*Dean v. Rampton*, 556 P.2d 205 (Utah 1976).
Limits of governmental activity
Va.—*Dean v. Paolicelli*, 194 Va. 219, 72 S.E.2d 506 (1952).
- 10 Mich.—*Civil Service Com'n of Michigan v. Auditor General*, 302 Mich. 673, 5 N.W.2d 536 (1942).

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1. In General

§ 6. Declaration and protection of fundamental rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  501

A constitution serves to declare and protect the practical, fundamental rights of the people.

A constitution serves to protect the people against arbitrary power.¹ The basic purposes of a written constitution are to secure to people certain unchangeable rights and remedies and to curtail unrestricted governmental activity within defined fields.²

The guarantees provided by the federal and state constitutions apply equally to all and cannot be denied to any one person without weakening the rights of all.³ Indeed, a constitution is not primarily designed to protect majorities who are usually able to protect themselves but to preserve and protect the rights of individuals and minorities against the arbitrary actions of those in authority.⁴ It is thus a function of constitutions to declare and protect fundamental rights.⁵

A constitution is intended to preserve practical and substantial rights, not to maintain theories.⁶ A constitution is, therefore, concerned with practical, substantial rights, not with those that are unclear and gain hold by subtle and involved reasoning.⁷

Constitutional rights cannot be created by statutes or rules,⁸ nor can they be abrogated by executive or judicial action.⁹ Further, the absence of an enabling statute cannot be construed to nullify rights provided by a constitution if those rights are sufficiently specific.¹⁰

Effect of failure to exercise power.

The failure to exercise a power expressly granted by a constitution does not destroy that power.¹¹

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Footnotes

- 1 Ohio—*State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 50 Ohio Op. 6, 110 N.E.2d 778 (1953).
- 2 Del.—*DuPont v. DuPont*, 32 Del. Ch. 413, 85 A.2d 724 (1951).
- 3 Ariz.—*Gusick v. Boies*, 72 Ariz. 309, 234 P.2d 430 (1951).
- 4 Fla.—*Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So. 2d 483, 172 A.L.R. 168 (1947).
- 5 U.S.—*Davis v. Passman*, 442 U.S. 228, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979).
Prevention of experimentation with fundamental rights
U.S.—*Truax v. Corrigan*, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921).
- 6 U.S.—*City of El Paso v. Simmons*, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965).
- 7 U.S.—*Federal Housing Administration v. Darlington, Inc.*, 358 U.S. 84, 79 S. Ct. 141, 3 L. Ed. 2d 132 (1958).
- 8 U.S.—*Clark v. Board of Ed. of Little Rock School Dist.*, 374 F.2d 569 (8th Cir. 1967).
- 9 U.S.—*Clark v. Board of Ed. of Little Rock School Dist.*, 374 F.2d 569 (8th Cir. 1967).
- 10 Vt.—*Shields v. Gerhart*, 163 Vt. 219, 658 A.2d 924 (1995).
- 11 Md.—*Johnson v. Duke*, 180 Md. 434, 24 A.2d 304 (1942).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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B. Nature and Authority of Constitutions

1. In General

§ 7. Constitution not subject to suspension, departure, or abandonment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  502

A constitution may not be suspended, departed from, or abandoned. Constitutional guaranties are not, however, immune from regulation or limitation in the interest of the common good.

Emergencies do not authorize the suspension of a constitution and its guaranties.¹ Rules of expediency cannot be placed above the constitution² however well-intentioned the proponents of the departure from the constitution may be.³

The vitality of constitutional principles also cannot be allowed to yield simply because of a disagreement with them.⁴ Thus, an effort to accommodate community sentiment or the wishes of the majority of the voters, although usually valid and desirable, cannot justify the abandonment of a constitution.⁵

The rights guaranteed by a constitution are not, however, so absolute that they must be exercised under all circumstances and without any qualification but, like other rights, must always be exercised with reasonable regard for the conflicting rights of

others.⁶ A constitution is not so rigid that it always mandates the same outcome even when its principles operate on a new set of facts that were previously unknown.⁷

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Footnotes

- 1 Ala.—*City of Mobile v. Rouse*, 233 Ala. 622, 173 So. 266, 111 A.L.R. 349 (1937).
- 2 Va.—*Town of Galax v. Appalachian Elec. Power Co.*, 177 Va. 29, 12 S.E.2d 778 (1941).
Effect of difficulty of compliance
Mich.—*Alan v. Wayne County*, 388 Mich. 210, 200 N.W.2d 628, 67 A.L.R.3d 1079 (1972), opinion adhered to on denial of reh'g, 388 Mich. 626, 202 N.W.2d 277 (1972).
- 3 U.S.—*Carter v. Carter Coal Co.*, 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936).
N.Y.—*Fink v. Cole*, 302 N.Y. 216, 97 N.E.2d 873 (1951).
- 4 U.S.—*Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964); *U.S. v. Indianola Municipal Separate School Dist.*, 410 F.2d 626 (5th Cir. 1969).
- 5 U.S.—*Keyes v. School Dist. No. One, Denver, Colo.*, 303 F. Supp. 279 (D. Colo. 1969), opinion modified on other grounds, 303 F. Supp. 289 (D. Colo. 1969).
- 6 U.S.—*Pierce v. Turner*, 276 F. Supp. 289 (D. Utah 1967), judgment aff'd, 402 F.2d 109 (10th Cir. 1968).
- 7 U.S.—*Kitchen v. Herbert*, 961 F. Supp. 2d 1181 (D. Utah 2013), judgment aff'd, 755 F.3d 1193 (10th Cir. 2014), cert. denied, 135 S. Ct. 265, 190 L. Ed. 2d 138 (2014).

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Constitutional Law

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

B. Nature and Authority of Constitutions

1. In General

§ 8. Conformance of statutory and common law to constitution

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  502

In order to be valid, statutory and common law must conform to both the federal and state constitutions, and laws that run afoul of a constitution are unconstitutional and void.

Statutory law, in order to be valid, must conform to applicable constitutions both federal and state.¹ In other words, constitutional language controls legislative language.²

Accordingly, constitutional provisions control in any conflict with lesser laws, such as statutes, local ordinances, administrative regulations,³ and case law.⁴ No statute can, therefore, breathe life into an instrument made and executed in contravention of a constitutional inhibition.⁵

Constitutions are not, however, designed to micromanage disputes between citizens.⁶ Thus, to resolve most actions, citizens must resort to statutes and common law.⁷

Unconstitutional laws.

An unconstitutional law is a law that runs contrary to constitutionally protected rights of individuals, and such cannot be allowed to stand.⁸ It is a rule or action which is established in opposition to the provisions or principles of the fundamental law and which is, therefore, in excess of the authority of the body or official promulgating it, and consequently, void.⁹

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Footnotes

- 1 Wash.—[Tilton v. Cowles Pub. Co.](#), 76 Wash. 2d 707, 459 P.2d 8 (1969).
- 2 Neb.—[State ex rel. Stenberg v. Murphy](#), 247 Neb. 358, 527 N.W.2d 185 (1995).
- 3 Ala.—[Bassett v. Newton](#), 658 So. 2d 398 (Ala. 1995).
- 4 Minn.—[State v. Wukawitz](#), 662 N.W.2d 517 (Minn. 2003).
- 5 Fla.—[Reid v. Bradshaw](#), 302 So. 2d 180 (Fla. 1st DCA 1974).
- 6 Iowa—[Putensen v. Hawkeye Bank of Clay County](#), 564 N.W.2d 404 (Iowa 1997).
- 7 Iowa—[Putensen v. Hawkeye Bank of Clay County](#), 564 N.W.2d 404 (Iowa 1997).
- 8 U.S.—[Condon v. Haley](#), 21 F. Supp. 3d 572 (D.S.C. 2014).
- 9 Kan.—[City of Lyons v. Suttle](#), 209 Kan. 735, 498 P.2d 9, 57 A.L.R.3d 1058 (1972).
State statute in conflict with Federal Constitution as void
Ky.—[Com. v. Barroso](#), 122 S.W.3d 554 (Ky. 2003).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

B. Nature and Authority of Constitutions

2. Particular Constitutions

a. Federal Constitution

§ 9. Federal Constitution as supreme law of the land

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  502

The Federal Constitution is the supreme law of the land along with federal statutes and treaties made under the authority of the United States.

The Federal Constitution, with its amendments, is the supreme law of the land,¹ more than a rule of public order or expression of public policy.² The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of persons, at all times and under all circumstances.³

As declared by the Supremacy Clause of the United States Constitution,⁴ the supreme law of the land is the Federal Constitution and laws of the United States made in pursuance thereof,⁵ together with treaties made under the authority of the United States.⁶

Premature review of state laws.

Although the Federal Constitution and laws of the United States are the supreme law of the land, and state legislation may not contravene federal law, the federal government does not have a general right to review and veto state enactments before they go into effect.⁷

CUMULATIVE SUPPLEMENT

Cases:

The Supreme Court decision in *Planned Parenthood v. Casey*, which held that the undue burden test, rather than the trimester framework, should be used in evaluating abortion restrictions before viability, did not announce a rule regarding the level of scrutiny to apply in First Amendment abortion-related disclosure cases. [U.S. Const. Amend. 1](#). [National Institute of Family and Life Advocates v. Harris](#), 839 F.3d 823 (9th Cir. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—[Smith v. O'Grady](#), 312 U.S. 329, 61 S. Ct. 572, 85 L. Ed. 859 (1941).
Okla.—[Flores v. State](#), 1999 OK CR 52, 994 P.2d 782 (Okla. Crim. App. 1999).
- 2 La.—[Baker v. Maclay Properties Co.](#), 648 So. 2d 888 (La. 1995).
- 3 U.S.—[Kennedy v. Mendoza-Martinez](#), 372 U.S. 144, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963).
- 4 U.S. Const. Art. VI, cl. 2.
- 5 U.S.—[Testa v. Katt](#), 330 U.S. 386, 67 S. Ct. 810, 91 L. Ed. 967, 172 A.L.R. 225 (1947).
Okla.—[Flores v. State](#), 1999 OK CR 52, 994 P.2d 782 (Okla. Crim. App. 1999).
- 6 Okla.—[Flores v. State](#), 1999 OK CR 52, 994 P.2d 782 (Okla. Crim. App. 1999).
As to treaties of the United States, generally, see [C.J.S., Treaties §§ 1 et seq.](#)
- 7 U.S.—[Shelby County, Ala. v. Holder](#), 133 S. Ct. 2612, 186 L. Ed. 2d 651 (2013).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

B. Nature and Authority of Constitutions

2. Particular Constitutions

a. Federal Constitution

§ 10. United States Constitution; effect on state law and enforcement

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  500, 502

The United States Constitution is binding on, and enforceable by, both federal and state officials. It is the dominant authority in the interpretation and enforcement of provisions of a state constitution which may be affected by federal organic provisions.

The United States Constitution is a compact established by the people of the United States and not by the states in their sovereign capacity.¹

In protecting the rights of the people, the Federal Constitution is binding on states and establishes a minimum standard.² Thus, judges, legislators, and executives, both federal and state, are bound by oath to enforce the Federal Constitution.³ The obligation to guard and enforce every right secured by the Federal Constitution rests, therefore, on state courts equally with federal courts.⁴

Within their proper sphere of operation, the provisions of the Federal Constitution are the dominant authority in the interpretation and enforcement of provisions of a state constitution, which may be affected by federal organic provisions.⁵

CUMULATIVE SUPPLEMENT

Cases:

If it becomes apparent that the Supreme Court's Commerce Clause decisions prohibit the States from exercising their lawful sovereign powers in the federal system, the Court should be vigilant in correcting the error. [U.S.C.A. Const. Art. 1, § 8, cl. 3. South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 \(2018\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Me.—[In re Opinion of the Justices](#), 118 Me. 544, 107 A. 673, 5 A.L.R. 1412 (1919).
- 2 Ga.—[Pope v. City of Atlanta](#), 240 Ga. 177, 240 S.E.2d 241 (1977).
- 3 U.S.—[Ex parte White](#), 66 F. Supp. 982 (Terr. Haw. 1944).
As to the oath of judges to support the Federal Constitution, generally, see [C.J.S., Judges § 48](#).
As to the oath of state officers, generally, see [C.J.S., States § 149](#).
As to the oath of members of Congress, generally, see [C.J.S., United States § 16](#).
- 4 U.S.—[Smith v. O'Grady](#), 312 U.S. 329, 61 S. Ct. 572, 85 L. Ed. 859 (1941).
Ind.—[Dixon v. State](#), 224 Ind. 327, 67 N.E.2d 138 (1946).
Binding on state court
Ga.—[Britt v. Smith](#), 274 Ga. 611, 556 S.E.2d 435 (2001) (overruled on other grounds by, [Lejeune v. McLaughlin](#), 296 Ga. 291, 766 S.E.2d 803 (2014)).
- 5 Fla.—[Gray v. Winthrop](#), 115 Fla. 721, 156 So. 270, 94 A.L.R. 804 (1934).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

B. Nature and Authority of Constitutions

2. Particular Constitutions

b. State Constitutions

§ 11. State constitutions, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  502

A state constitution is the supreme law within the ambit of its authority subject only to limitations imposed by the Federal Constitution.

A state constitution is a document of independent force¹ which represents the fundamental expression of the people regarding the limits on governmental power² and the framework of their state government.³ It is, above all, the embodiment of the will of the people, and the state supreme court's responsibility as final expositor is to ascertain and enforce that mandate.⁴

Because it emanates directly from the people,⁵ a state's constitution is a superior, paramount law⁶ and the supreme law of the state.⁷

Hence, the constitution of a state, like that of the nation, is the supreme law within the realm and sphere of its authority.⁸ Identical state and federal constitutional provisions are each enforceable in its own respected sphere where those principles attach,⁹ and where the provisions of a state constitution are not affected by the Federal Constitution, they are the supreme law.¹⁰

Nevertheless, a state constitution is subject to applicable restraints resulting from the Federal Constitution.¹¹

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Footnotes

- 1 Cal.—*People v. Rivera*, 127 Cal. App. 3d 136, 179 Cal. Rptr. 384 (4th Dist. 1981).
 - 2 Or.—*State v. Rodriguez*, 347 Or. 46, 217 P.3d 659 (2009).
 - 3 Neb.—*State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006).
 - 4 N.J.—*State v. Buckner*, 437 N.J. Super. 8, 96 A.3d 261 (App. Div. 2014), appeal pending (Oct. 30, 2014).
 - 5 Kan.—*In re Lietz Const. Co.*, 273 Kan. 890, 47 P.3d 1275 (2002).
 - 6 Kan.—*Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196, 302 Ed. Law Rep. 377 (2014).
 - 7 Ga.—*Sherman v. Atlanta Independent School System*, 293 Ga. 268, 744 S.E.2d 26, 294 Ed. Law Rep. 368 (2013).
 - La.—*Louisiana Federation of Teachers v. State*, 201 L.R.R.M. (BNA) 3694, 2014 WL 5287248 (La. 2014).
 - Nev.—*Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518, 130 Nev. Adv. Op. No. 52 (Nev. 2014).
 - 8 N.H.—*Burling v. Chandler*, 148 N.H. 143, 804 A.2d 471 (2002).
 - 9 Mont.—*Madison v. Yunker*, 180 Mont. 54, 589 P.2d 126 (1978).
 - 10 Fla.—*Gray v. Winthrop*, 115 Fla. 721, 156 So. 270, 94 A.L.R. 804 (1934).
 - 11 Me.—*LaFleur ex rel. Anderson v. Frost*, 146 Me. 270, 80 A.2d 407 (1951).
- As to the restraints on a state constitution by the Federal Constitution, generally, see § 10.

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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B. Nature and Authority of Constitutions

2. Particular Constitutions

b. State Constitutions

§ 12. State constitutions as limitations on state governments

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  502

A state constitution is a limitation on the power of the state government and the people themselves. Its provisions are exclusive and final, and it may not be abrogated except through constitutional amendment.

The constitution of a state is a limitation on the power of the legislature, binding on the several departments of state government,¹ all its officers and agencies,² the state's supreme court,³ and the people themselves.⁴

Accordingly, among the various interests that a state government seeks to protect and promote, interests represented by the state constitution are paramount to legislative ones.⁵ When a constitution contains a definite provision covering a particular subject, that provision is exclusive and final and must be accepted unequivocally.⁶

To recognize an expansive legislative power to redefine terms in a state constitution is inconsistent with a state's constitution's supremacy over statutes.⁷ Indeed, a principle of questionable constitutionality should not be extended beyond its present application or limitation especially if such extension would violate either the letter or the spirit of the state constitution.⁸

Constitutional provisions may not, therefore, be abrogated⁹ or restricted¹⁰ by the legislature, in any way, other than by changing the constitution itself.¹¹ Because the state constitution controls over any conflicting statutory provisions,¹² any state laws that run contrary to a state's constitutionally protected rights of individuals cannot be allowed to stand.¹³

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Footnotes

- 1 Miss.—[Newell v. State](#), 308 So. 2d 71 (Miss. 1975).
- 2 W. Va.—[State ex rel. West Virginia Citizen Action Group v. Tomblin](#), 227 W. Va. 687, 715 S.E.2d 36 (2011).
- 3 Ga.—[Britt v. Smith](#), 274 Ga. 611, 556 S.E.2d 435 (2001) (overruled on other grounds by, [Lejeune v. McLaughlin](#), 296 Ga. 291, 766 S.E.2d 803 (2014)).
- 4 Miss.—[Newell v. State](#), 308 So. 2d 71 (Miss. 1975).
- 5 Or.—[State v. Stoneman](#), 323 Or. 536, 920 P.2d 535 (1996).
- 6 Mass.—[In re Opinion of the Justices](#), 271 Mass. 575, 171 N.E. 237 (1930).
- 7 Mich.—[WPW Acquisition Co. v. City of Troy](#), 466 Mich. 117, 643 N.W.2d 564 (2002).
- 8 Pa.—[Miller v. City of Beaver Falls](#), 368 Pa. 189, 82 A.2d 34 (1951).
- 9 R.I.—[Bailey v. Baronian](#), 120 R.I. 389, 394 A.2d 1338 (1978).
- 10 Wash.—[Belas v. Kiga](#), 135 Wash. 2d 913, 959 P.2d 1037 (1998).
- 11 R.I.—[Bailey v. Baronian](#), 120 R.I. 389, 394 A.2d 1338 (1978).
As to amendment and revision of state constitutions, generally, see §§ 26 et seq.
- 12 Nev.—[Thomas v. Nevada Yellow Cab Corp.](#), 327 P.3d 518, 130 Nev. Adv. Op. No. 52 (Nev. 2014).
- 13 La.—[Louisiana Federation of Teachers v. State](#), 201 L.R.R.M. (BNA) 3694, 2014 WL 5287248 (La. 2014).

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b. State Constitutions

§ 13. State constitutions as giving broader protections than Federal Constitution

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 502, 617

A state constitution may provide citizens with additional protections above and beyond those given by the Federal Constitution.

While the United States Constitution sets a minimum standard for the protection of a right against interference, a state is free to be more restrictive of such interference pursuant to its own constitution.¹

It has been stated that the Federal Constitution sets the floor for individual rights while a state constitution establishes the ceiling.² The relationship between the state and federal constitutions has also been described as both state and federal constitutional protections serving as a floor in setting the minimum level of protections that must be afforded to citizens.³ In either event, the states are free to provide citizens with additional protections above and beyond the constitutional floor without contravening the Federal Constitution or its intent.⁴

Power of state supreme court.

A state supreme court, as the ultimate judicial tribunal with final, unreviewable authority to interpret and enforce the state constitution, is free to give broader protection than that given by the Federal Constitution.⁵

CUMULATIVE SUPPLEMENT

Cases:

The federal Constitution establishes certain minimum levels which are equally applicable to the analogous state constitutional provision, and each state has the power to provide broader standards, and go beyond the minimum floor which is established by the federal Constitution. [Commonwealth v. Arter, 151 A.3d 149 \(Pa. 2016\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ga.—[Pope v. City of Atlanta, 240 Ga. 177, 240 S.E.2d 241 \(1977\)](#).
- 2 S.C.—[State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 \(Ct. App. 2015\)](#).
- 3 Ky.—[Sevier v. Com., 434 S.W.3d 443 \(Ky. 2014\)](#).
- 4 Ky.—[Sevier v. Com., 434 S.W.3d 443 \(Ky. 2014\)](#).
- 5 Haw.—[State v. Walton, 133 Haw. 66, 324 P.3d 876 \(2014\)](#).

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